



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

SMC

Docket No: 06277-99

10 February 2000

SSGT [REDACTED] USMC

Dear Staff Sergeant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552. You requested removal of a fitness report for 22 September to 14 November 1997. In the alternative, you asked that the report be changed to a "not observed" appraisal.

It is noted that the Commandant of the Marine Corps (CMC) referred the reviewing officer's original comments to you for an opportunity to rebut, obtained additional statements from you, the reviewing officer, and the third sighting officer, and directed insertion in your record of only the additional statements from you and the third sighting officer (they determined the reviewing officer's additional statement dated 29 July 1999 should not be filed).

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 10 February 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 30 September 1999, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice warranting further correction. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. In view of the above, your application for relief beyond that effected by CMC has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and

material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

6277-97

IN REPLY REFER TO:
1610
MMER/PERB
SEP 30 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT [REDACTED], [REDACTED] USMC

Ref: (a) SSgt. [REDACTED] DD Form 149 of 17 Mar 99
(b) MCO P1610.7D w/Ch 1-4

Encl: (1) Completed Fitness Report 970922 to 971114 (CD)

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 19 May 1999 to consider Staff Sergeant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 970922 to 971114 (CD) was requested. In the alternative, the petitioner asked that Sections B and C of the report be removed and the entire document changed to a "not observed" appraisal. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the report contains policy/procedural errors and represents a substantive inaccuracy and/or injustice. To support his appeal, the petitioner furnishes his own detailed statement, a copy of a Counseling Worksheet, a copy of the challenged fitness report, and statements from Major [REDACTED] First Sergeant [REDACTED] and Gunnery Sergeant [REDACTED]

3. In its proceedings, the PERB concluded that, with one minor exception, the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Notwithstanding the documentation furnished in support of reference (a), the Board finds nothing substantive to prove that the report is anything other than a fair and accurate assessment of his performance during the stated period. While the observations of First Sergeant [REDACTED] and Gunnery Sergeant [REDACTED] shed some light on the situation, the Board concludes that the Reporting Senior was the one in the best position to evaluate/document the petitioner's overall performance. Likewise, he was the one to decide what was or was not important to include in the report. To this end, the board discerns absolutely no injustice.

(4) PERB

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SERGEANT [REDACTED], [REDACTED] USMC

b. The Board did determine that the overall tenor of Major [REDACTED]'s Reviewing Officer comments were such that the petitioner should have been given an opportunity to acknowledge and respond. Owing to the relative recency of the report at the time the PERB first considered reference (a) (18 months) the Board found that such referral action at that time would be appropriate. The petitioner availed himself of his right to reply and both the Reviewing Officer and Third Sighting Officer provided additional comments. In regard to this action, the Board points out the following:

(1) Following the petitioner's rebuttal to the Reviewing Officer's remarks, Maj. [REDACTED] should not have been solicited to provide additional commentary. The PERB is, therefore, directing the removal from the petitioner's official military record of Major [REDACTED]'s Standard Addendum Page of 990729.

(2) Both in his initial comments as the Third Sighting Officer, and also in his response to the petitioner's rebuttal to Maj. [REDACTED]'s comments, Colonel [REDACTED] dispelled any perception that the report is not a fair and accurate assessment.

c. While the inclusive period of the report encompasses less than the 90-day observation period suggested by reference (b), the Board points out that the Reporting Senior was well within his prerogative in submitting an observed evaluation. This is especially relevant considering the close and daily contact between the petitioner (Platoon Sergeant) and the Reporting Senior (Platoon Commander). The Board also concludes that the importance of the information furnished in the fitness report further justifies its submission as an observed appraisal.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, as modified, should remain a part of Staff Sergeant [REDACTED]'s official military record. Enclosure (1) contains a copy of the report as it will be reflected in his record.

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ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF STAFF
SERGEANT [REDACTED] USMC

5. The case is forwarded for final action.

D. J. Christiansen
D. J. CHRISTIANSEN

Chairperson, Performance
Evaluation Review Board
Personnel Management Division
Manpower and Reserve Affairs
Department

By direction of the Commandant
of the Marine Corps